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Solengo's Lawyers Strike Back: We Still Say Suck It.



SOLENGO CAPITAL

We're not going to pretend we're shocked that Solengo Capital didn't exactly love [our response to their request to remove their marketing brochure from their website](#). We figured sooner or later they'd get a lawyer to write us a letter threatening to

revoke our license to practice the internet or something.

And we got it.

"The posting of this Offering Memorandum violates applicable copyright laws," the letter from the Solengo attorney at Kobre & Kim begins. "In any event, it contains information that is proprietary in nature about the company's future plans."

Sorry. No dice. We write about "information that is proprietary in nature" about the "future plans" of companies all the time, Solengo-nauts. It's what we do. It's called financial journalism.

To be perfectly straightforward, we were actually slightly nicer to Solengo than we've been letting on. When they first called us we called them back and asked which portions of the brochure they didn't want us to print, and gave them the chance to play ball. At this point, most folks might have been for them to offer us kind of scoop on Solengo or Brian Hunter. We're very reasonable, and pretty easy to talk to. They should ask their friends in the hedge fund world, if they have any left. This whole "talking off the record to journalists" is what sensible people do when they want to influence the way a story is printed. In politics they call it "spinning."

But they didn't go for it. They wanted to play tough, and made unreasonable demands that we remove everything—the brochure and the posting that went with it. And they gave us very bad reasons for why we should comply—mainly, the loony-tunes confidentiality theory.

Which is when we decided that the correct response to them was what [Andrew Ross Sorkin describes](#) as "an off-color two-word phrase that essentially means 'no way.'"

We called the lawyers for Solengo back, by the way. Got voicemail. So far, no-one has returned our call.

After the jump, you can check out the full letter from their lawyer. Spoiler: they bring out the big guns and warn that they "may be forced to go to court" to sue us.

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March 28, 2007

BY E-MAIL

Bess Levin
DealBreaker.com
Dead Horse Media
262 Mott Street, Suite 102A
New York, New York 10012

Re: Solengo Capital

Dear Ms. Levin:

We write on behalf of our client, Solengo Capital, to follow up on the issues we raised during our telephone conference this afternoon. As discussed, it has come to our attention that you are currently posting on your website, dealbreaker.com, a copy of an Offering Memorandum from Solengo Capital along with associated commentary.

The posting of this Offering Memorandum violates applicable copyright laws. It has been posted without Solengo's permission and its public disclosure is illegal and improper. In any event, it contains confidential information that is proprietary in nature about the company's future plans. In addition, the associated commentary is defamatory and damaging to the reputation of Solengo Capital and its principals. Accordingly, we demand that you remove this posting from your website immediately. If you do not remove the Offering Memorandum and associated commentary immediately, Solengo Capital may be forced to go to court in order to protect itself from the irreparable damage being caused by this posting.

Sincerely,

Jonathan D. Cogan
212.488.1231

By John Carney | 03.29.07 at 03:03 PM





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Comments

What about applicable copyright law? Also loony-tunes?

Posted by: Anonymous | [March 29, 2007 03:06 PM](#)

keep up the good fight dealbreaker!!!

Posted by: anon | [March 29, 2007 03:25 PM](#)

Wait a minute. The associated commentary is "defamatory and damaging to the reputation of Solengo Capital and its principals". Hhmmmm.....

I think that a 6b bad bet on a Hurricane is a little more damaging to one's reputation.

Posted by: Anonymous | [March 29, 2007 03:27 PM](#)

DHM being rather full of lawyers, they do know what they're doing. One reason why the copyright argument is looney-tunes is that this is marketing material. Since dealbreaker is just republishing it without alterations there isn't much of a cause of action. There's also the protection that comes from commentary and satire aka fair use.

The best argument was that they are doing this to protect them from idiot the Connecticut AG and some Spitzeresque SEC attorney - no one wants to be John Mackled by some over age middle-manager who wants to be the next Sharon Watkins. So this is all posturing and everyone knows its crap, even Solengo. Suits where the lawyers all know it's crap are common, but having everyone knowing that it's kabuki is rather uncommon.

Posted by: Bulging Bracket | [March 29, 2007 03:30 PM](#)

Solengo seems to be making some +idiotic+ smooth PR moves as they launch this new +debacle+ venture. By doing this, Solengo is only making themselves look bad.

Posted by: Anonymous | [March 29, 2007 03:34 PM](#)

"See especially: "Each fund contains margin restrictions and maximum capital restrictions to prevent serious liquidity and contagion risks from arising" and "Violation of restrictions eliminates ALL capital locks for investors in the fund," p.2. Though the pictures are our favorite parts, particularly the one of the flames, also p. 2 ("Our fund is on FIRE!"? "Investing in our fund will be like putting your money in a paper bag and lighting it on fire"? These things are so subjective)."

That's probably the LEAST "defamatory and damaging" thing Miss Levin has ever written! Solengo should take that as a compliment and call it a day.

Posted by: Team Dealbreaker | [March 29, 2007 03:36 PM](#)

Don't let them bully you with some made up, looney-tunes interpretation of copyright law..... keep up the fight!

Posted by: Tijuana tornado | [March 29, 2007 03:48 PM](#)

And why are they beating up on Bess? What is she, 15?

Posted by: Anonymous | [March 29, 2007 03:51 PM](#)

Is mentioning that Brian Hunter lost people \$6B of capital and cost over 400 people their jobs? Or what about the fact that he was cheating on his wife? All are true facts.

Posted by: PBateman | [March 29, 2007 04:02 PM](#)

Bess is actually 17... with her sass and brains, can you imagine what she'll be like at 25! Look out Solengo, she's going to own your ass by then!

Posted by: Anonymous | [March 29, 2007 04:24 PM](#)

why is it dated march 28, 2007?

WAS THIS LETTER BACKDATED???

Posted by: amh | [March 29, 2007 04:48 PM](#)

Hey, Carney, maybe Mr. Cogan will give you a break, considering you're both Penn Law grads... ph34r the third year!!!

Registration Number: 4167276

JONATHAN DAVID COGAN
KOBRE & KIM LLP
800 3RD AVE
NEW YORK, NY 10022-7601
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(212) 488-1231

Year Admitted in NY: 2003
Appellate Division Department of Admission: 1
Law School: UNIVERSITY OF PENNSYLVANIA
Registration Status: Currently registered
Next Registration: Nov 2007

Posted by: 10803 | [March 29, 2007 05:32 PM](#)

Who the hell is Kobre & Kim? Never heard of them.

I pulled up their website and apparently they do a lot of criminal defense. Now it all makes sense....

Posted by: AJ | [March 29, 2007 05:40 PM](#)

Just to give a bit more background:

"Jonathan D. Cogan practices in the area of white-collar criminal defense, with a particular emphasis on criminal antitrust matters, regulatory investigations, and complex civil litigation relating to creditors' rights and securities disputes."

Posted by: AJ | [March 29, 2007 05:42 PM](#)

Kobre and Kim? who the hell heard of them. No respectable law firm would take on the case? Or he can't pay a real firm.

Posted by: Last Man Standing | [March 29, 2007 06:13 PM](#)

If my name was Kobre or Kim and if I was a lawyer starting my own firm, I would certainly not use the names kobre and kim as the name. pick something irish like fitzgerald.

Posted by: Last Man Standing | [March 29, 2007 06:22 PM](#)

None of the usual "cease and desist" legal mumbo jumbo? they cant be really good lawyers.

Posted by: Last Man Standing | [March 29, 2007 06:23 PM](#)

Here's a list of their "victories"
Recent Victories

Kobre & Kim LLP obtains complete dismissal prior to trial of criminal complaint charging client with commission of a B felony

Prior To Summations In Civil Jury Trial, Kobre & Kim LLP Obtains Complete Withdrawal Of Plaintiff's Claims

Kobre & Kim LLP Wins Hearing To Suppress Key Statements Of Client In Highly-Publicized KPMG Tax Shelters Prosecution

Kobre & Kim LLP Secures Complete Defense Victory For Financial Institution Client In Multi-Million Dollar Securities Arbitration in Philadelphia

Kobre & Kim LLP Secures A Verdict of "Not Guilty On All Counts" For Private Client In Complex Health Care Fraud Trial

Claim Relating to \$200 Million In Treasury Securities Against Kobre & Kim LLP Broker-Dealer Client By Another Member Firm Dismissed With Prejudice By NASD Panel

Kobre & Kim LLP Obtains Finding Of "Zero Liability" On Behalf Of Institutional Defendant In Civil securities Case In Houston, Texas

Kobre & Kim LLP Obtains Complete Defense Verdict On Behalf Of Investment Banking Client In Civil Securities Case In Raleigh, North Carolina

this is really sime high class firm.

Posted by: Last Man Standing | [March 29, 2007 06:26 PM](#)

What's the big deal? Others out there have it. Naked Shorts is back indeed with links to the offering mem. And www.finalalternatives.com has the whole marketing document too. WHY does DealBreaker go out of its way to act like it is so revolutionary? Needless to say, who the fuck would invest in this fund?

Posted by: Anonymous | [March 29, 2007 11:34 PM](#)

11:34: maybe b/c dealbreaker's been the only one threatened with legal action?

Posted by: Anonymous | [March 29, 2007 11:44 PM](#)

Carney, et al, you may have hit upon a point of law that has not been explored before. I agree that no one can impose a duty of law or care that is not imposed by common law or statute. What you did do, however, is expose information that cannot, by regulation, be exposed to the public by public dissemination per SEC regulation unless there is a registration of the securities by the SEC. Considering how broadly the SEC interprets "general solicitation," this exposure on your website would have to be considered a general solicitation, even if it was unintended (especially considering that not all of us are AIs or QPs). Don't believe me, check out Lexis or a securities law textbook on how tightly the courts have considered a general solicitation.) Without the exemption, you have no hedge fund, and no performance fee, as per SEC regs.

So what I'm saying is, I don't think Carney, Levin, and the rest have committed a crime, or even a violation of applicable law, but I do think that there are significant legal issues raised by the public dissemination of information that would make an offering document a general solicitation without the principals' knowledge or permission. At the very least, I would expect a campaign of "Tortious Interference" to get an injunction to take it down immediately.

Posted by: Anonymous | [March 30, 2007 04:15 AM](#)

@4:15 - WTF?

Please cite an example of a "general solicitation" (which is construed very broadly) ever being applied to anyone other than an issuer, underwriter or dealer. Transactions by anyone other than any of the foregoing are specifically exempted from the 33 Act. See Section 4(1).

I sincerely hope you're not a practicing securities lawyer.

Posted by: 10803 | [March 30, 2007 08:58 AM](#)

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Is there mercy in this dojo?
No, Carney!!!

Posted by: voiceoftheemployee | [March 30, 2007 09:11 AM](#)

Put him in a body bag Carney!

Posted by: PBateman | [March 30, 2007 09:14 AM](#)

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